

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Developing a Unified Intercarrier)	
Compensation Regime)	CC Docket No. 01-92
)	
)	

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

RONALD K. CHEN
PUBLIC ADVOCATE

Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
(973) 648-2690 - Phone
(973) 624-1047 – Fax
www.rpa.state.nj.us
njratepayer@rpa.state.nj.us

On the Comments:

Christopher J. White, Esq.
Deputy Ratepayer Advocate

Date: April 12, 2007

I. INTRODUCTION

On January 30, 2007, the Missoula Plan Supporters and five State Commissions filed an amendment to the “Missoula Plan” (“Plan” or “Missoula Plan”), which they refer to as the Federal Benchmark Mechanism, with the Federal Communications Commission (“FCC” or “Commission”).¹ New Jersey Division of Rate Counsel (“Rate Counsel”) hereby responds to the initial comments submitted in response to the FCC’s public notice seeking comment on the Federal Benchmark Mechanism (“FBM”) amendment to the Missoula Plan.² Rate Counsel also submitted initial comments regarding the FBM as well as initial and reply comments about the original Missoula Plan.³ Rate Counsel continues to oppose the Missoula Plan for the numerous reasons outlined in previously filed comments, and also opposes the Plan as amended by the FBM. Contrary to the supporters’ assertions, the FBM does not address the Missoula Plan’s fundamental flaws, and, instead, continues to shift the burden of reform from the industry to consumers.

¹ / See Letter from Peter Bluhm, Esq., Vermont Public Service Board; Christopher Campbell, Telecommunications Director, Vermont Department of Public Service; Steve Furtney, Chairman, Wyoming Public Service Commission; Angela DuVall Melton, Esq., Nebraska Public Service Commission; Joel Shifman, Esq., Maine Public Utilities Commission; Joseph Sutherland, Executive Director, Indiana State Regulatory Commission; and the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, January 30, 2007 (“Ex Parte Letter”). This filing was corrected by a subsequent filing on February 5, 2007. See Letter from the Supporters of the Missoula Plan to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 01-92, February 5, 2007 (Missoula Plan Corrected *Ex Parte* Letter).

² / FCC Public Notice, “Comment Sought On Amendments To The Missoula Plan Inter-carrier Compensation Proposal To Incorporate A Federal Benchmark Mechanism,” CC Docket No. 01-92, DA 07-738, Released February 16, 2007. The filing deadline was subsequently extended. FCC Public Notice, “Pleading Cycle Extended for Comment on Amendments to the Missoula Plan Inter-carrier Compensation Proposal to Incorporate a Federal Benchmark Mechanism,” CC Docket No. 0192, DA 07-1337, Released March 16, 2007.

³ / *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Comments of the New Jersey Division of Rate Counsel, October 24, 2006; Reply Comments of the New Jersey Division of Rate Counsel, February 1, 2007. Rate Counsel also filed comments and reply comments regarding the Phantom Traffic Solution. *In the Matter of Developing a Unified Inter-carrier Compensation Regime*, CC Docket No. 01-92, Comments of the New Jersey Division of Rate Counsel, December 7, 2006; Reply Comments of the New Jersey Division of Rate Counsel, January 3, 2007.

II. COMMENTS DO NOT SUPPORT THE ADOPTION OF THE MISSOULA PLAN AS AMENDED BY THE FEDERAL BENCHMARK MECHANISM PROPOSAL

The vast majority of comments filed in response to the Commission's Public Notice urge the Commission to reject the FBM amendment.⁴ Even among supporters, the comments filed enumerate several weaknesses that would have to be addressed before the Commission could consider adopting the amendment.⁵ The Commission should reject the FBM amendment as well as the underlying Missoula Plan and instead focus on developing another plan or examine other reform proposals submitted in this proceeding, such as that submitted by NASUCA during an earlier phase of this proceeding.⁶

Attempts to achieve rate comparability under the auspices of intercarrier compensation reform are unsupported.

According to the South Dakota Telecommunications Association ("SDTA"), the "FBM helps promote rate comparability among states and greater equity among consumers by providing funding to carriers in states with end-user rates that either exceed

⁴ / See, e.g., Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications ("Joint CLEC Commenters"); CTIA – The Wireless Association; Florida Public Service Commission ("Florida PSC"); Five State Members of the Mid-Atlantic Conference of Regulatory Utility Commissioners and Their State Commissioners ("Five MACRUC States"); The National Association of State Utility Consumers Advocates ("NASUCA"); Verizon; The National Cable & Telecommunications Association ("NCTA"); New York Department of Public Service ("New York DPS"); Qwest Communications International, Inc. ("Qwest"); Sprint Nextel Corporation ("Sprint Nextel"); Virginia Corporation Commission; New Jersey Board of Public Utilities.

⁵ / See, e.g., Texas Statewide Telephone Cooperative, Inc. ("TSTCI"); Blackfoot Telecommunications Group ("Blackfoot"); Dubois Telephone Exchange, Inc., Range Telephone Cooperative, Inc. and RT Communications, Inc. ("Range Family Companies").

⁶ / The FCC originally sought comment on various industry proposals as well as that of NASUCA. *In the Matter of Developing a Unified Intercarrier Compensation Regime*, FCC CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, Released March 3, 2005. In reply comments filed July 20, 2005, Rate Counsel discussed the merits of using NASUCA's proposal as a reasonable foundation for discussion and refinement. Rate Counsel urges the Commission to adopt NASUCA's plan rather than the Missoula plan as a starting point for intercarrier compensation reform.

the High Benchmark Rate, or would exceed the High Benchmark Rate after subscriber line charge (“SLC”) increases prescribed in the Plan were implemented” and “[t]he FBM recognizes the different efforts that states have made to reduce their intrastate access rates.” The SDTA further asserts that “[s]tates that have reduced their intrastate access rates have generally increased end-user rates for basic local exchange service, instituted a state universal service support fund, or taken both measures.”⁷ However, the SDTA does not provide any support for these assertions.

While Blackfoot Telecommunications Group (“Blackfoot”) is correct that the FBM does protect some consumers that already have higher end user rates from further rate increases,⁸ the Plan by no means protects all consumers. Rate Counsel concurs with Blackfoot’s assessment that consumers should not be penalized for the fact that some states have been “progressive in rate reform and rebalancing.”⁹ However, Blackfoot’s assertion that the FBM “has the positive collateral effect of ensuring that end user rates and services are reasonably comparable among all types of consumers”¹⁰ is not persuasive because it lacks supporting information.

As stated in Rate Counsel’s initial comments, the proposed mechanism “appropriately recognizes the importance of assessing revenues associated with ILECs’ local exchange service when assessing states’ needs for universal service funding.”¹¹ Despite opposing the Missoula Plan and the FBM amendment, as stated in initial

⁷ / SDTA, at 2-3; *See, also*, Western Telecommunications Alliance (“WTA”), at 2.

⁸ / Blackfoot, at 3.

⁹ / *Id.*, at 4.

¹⁰ / *Id.*

¹¹ / Rate Counsel, at 5.

comments, the Rate Counsel “concur[s] that early adopters should not be penalized.”¹² Other commenters express similar sentiments.¹³ However, supporters’ attempts to solve the “early adopter” problem raise a host of other issues.

The New York Department of Public Service (“New York DPS”), among others, contends that differences in end-user rates may be accounted for by numerous reasons left unconsidered by the supporters’ analysis.¹⁴ As stated in Rate Counsel’s initial comments¹⁵ and in the Rate Counsel’s comments regarding proposals to reform the non-rural high cost fund:

State rate designs result from unique regulatory proceedings which entail, among other things, decisions about cost recovery among customer classes, decisions about local calling areas, and decisions about revenue requirement. One state’s decision to adopt accelerated depreciation lives for an ILEC’s plant, and another state’s decision to set a relatively higher productivity offset in a price cap plan than does its neighboring state affect rate levels in each state. The myriad and countless ways that state regulators uniquely determine rate structures and rate levels within their jurisdictions contribute to variability among rates. The variability, therefore, is not necessarily related to the underlying cost of providing service, but rather to reasonable differences of view among state regulators about revenue requirement components, rate design, and price cap plan mechanics. Because of these countless factors, which state regulators address, the [Rate Counsel] is wary of any federal mechanism that places undue emphasis on precision in rate comparisons.¹⁶

A similar analysis applies in this instant case. The Rate Counsel reiterates its concern expressed in its initial comments:

¹² / *Id.*

¹³ / *See, e.g.,* NASUCA, at 3-4.

¹⁴ / New York DPS, at 4.

¹⁵ / Rate Counsel, at 6-8.

¹⁶ / *In the Matter of Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45; WC Docket No. 05-337, Comments of the New Jersey Division of the Ratepayer Advocate, March 27, 2006, at 29-30. *See, also, Id.*, at Table 3, Appendix A.

One aspect of the Mechanism that merits consideration is the potential impact on states with rates that are low, not necessarily because the costs of providing basic local exchange service are low (or revenues particularly high) but rather as a result of affirmative state regulatory action. Examples of such regulatory initiative that federal mechanisms should not penalize include relatively larger productivity offsets in an ILEC's price cap plan than those set by state regulators in other states, a service quality index that yields lower rates when service quality declines below acceptable levels, or lower allowed cost of capital.¹⁷

On the other end of the spectrum, as noted by the National Association of State Utility Consumer Advocates ("NASUCA"), states that have higher end user rates for reasons other than state initiatives to lower switched access charges should not benefit from the FBM. The FBM does not seek to differentiate the reasons for high end user rates, but rather appears to assume that high end user rates are necessarily a result of low intrastate access charges. As NASUCA aptly observes:

This is a very large assumption on which to base an \$800 million support mechanism. Particularly the assumption that "states with very high end user rates" are necessarily those that raised rates "to recover costs that previously were recovered through intrastate access charges." Clearly, the FBM largely ignores actual intrastate access charges and the state regulatory decision that dictates those rates. Categories A, B and C make no mention of access charges at all. Access charges come into play only in the Low Rate Adjustment, where the adjustment is not made if intrastate access charges are within 10% of interstate charges.¹⁸

The five state members of the Mid-Atlantic Conference of Regulatory Utility Commissioners ("Five MACRUC States") also raise this concern, highlighting the absence of any analysis that supports a "definite link between the level of basic local rates and reduced intrastate access charges."¹⁹

¹⁷ / Rate Counsel, at 6-7.

¹⁸ / NASUCA, at 8.

¹⁹ / Five MACRUC States, at 5; *See, also*, Verizon, at 6; CTIA – The Wireless Association, at 3.

The benchmarks that the FBM amendment supporters establish to achieve rate comparability are unsupported: FBM proponents have not justified the high and low ends of the benchmark nor documented any calculations or analysis to arrive at the particular benchmarks. Numerous comments remark upon these omissions.²⁰ In expressing concerns about the lack of justification for the calculations presented in the January 30th *ex parte* filing and with respect to the high and low benchmark targets, the Five MACRUC States state that “the proponents apparently just decided that they were appropriate.”²¹ Texas Statewide Telephone Cooperative, Inc. (“TSTCI”) states: “The FBM seems to be based on the premise that local service rates for all consumers in the country should be between \$20 and \$25. While these benchmarks may be reasonable, the FBM plan does not include any supporting data or analysis as to how these particular rate benchmarks were determined.”²²

Additionally, the Commission should consider NASUCA’s concerns that the Plan may implicate the mandate of *Qwest II* to define comparability.²³ As noted by NASUCA, the “attempt to establish comparability also suffers from a narrow definition that goes far beyond most what has previously been proposed to the Commission.”²⁴ The definition of “comparability” is still an outstanding issue before the Commission that merits careful deliberation.

²⁰ / Qwest, at 4; Joint CLEC Commenters, at fn 7 describing the choice of benchmarks as “arbitrary”; CTIA – The Wireless Association calls the benchmarks “arbitrary and capricious.” CTIA – The Wireless Association, at iii.

²¹ / Five MACRUC States, at 4.

²² / TSTCI, at 2.

²³ / See NASUCA, at 9-10.

²⁴ / *Id.*, at 10.

Finally, the establishment of national high and low rate benchmarks appears to be an attempt at national ratemaking, which would raise jurisdictional issues.²⁵ The attempt to establish “rate comparability” under the auspices of an intercarrier compensation plan is inappropriate and preempts state ratemaking authority, as is discussed in more detail below.

The FBM unlawfully preempts state authority.

The United States Telecom Association (“USTelecom”) asserts that the FBM is legal and that the Commission is “entitled to employ both ‘carrots’ and ‘sticks’ to ‘induce adequate state action.’”²⁶ As stated in Rate Counsel’s comments regarding the Missoula Plan, the proposal improperly usurps states’ rate-making authority.²⁷ The Florida Public Service Commission (“Florida PSC”) observes that the Plan, including the FBM amendment, conflicts not only with federal law, but also with Florida statutes.²⁸ The New York DPS notes that “the Fund would improperly attempt to federalize previous reductions of intrastate access charges,” and that “the Commission lacks legal authority to determine intrastate access charges.”²⁹ For these reasons the Commission should reject the Missoula Plan and the FBM.

²⁵ / See, e.g., Florida PSC, at 4; New York DPS, at 3; NASUCA, at 10; Joint CLEC Commenters, at 3; Sprint Nextel, at 5.

²⁶ / USTelecom, at 8, citing *Qwest Corp. v. FCC*, 258 F.3d 1191, 1204 (10th Cir. 2001).

²⁷ / Comments of the New Jersey Division of Rate Counsel, CC Docket No. 01-92, October 24, 2006, at 5, 21-22, 25.

²⁸ / Florida PSC, at 4, stating: “Although the plan is described as having ‘optional elements,’ the basis of the plan is complete FCC preemption of authority over ICC rates, both interstate and intrastate. There is no basis in law for such an abrogation of power.”

²⁹ / New York DPS, at 3.

The complexity of the Missoula Plan and accompanying FBM amendment is coupled with a troubling lack of specifics.

Ideally, the Commission should refrain from expending the resources required to examine the details regarding the purported impact on, or benefits to, consumers of the FBM amendment.³⁰ As Rate Counsel has previously explained, the Missoula Plan is a distraction and has resulted in the utilization of resources that otherwise could be used to develop a better plan.³¹ Nevertheless, other commenters have expended considerable time and energy to highlight the major additional flaws of the FBM amendment, chief of which is that the supporters fail to provide the basic data and calculations used to model the projected effects and benefits of the amendment. In Sprint Nextel Corporation's ("Sprint Nextel") words: the proposal is "woefully lacking in detail."³² The New York DPS points out that the January 30th *ex parte* lacks important information required for parties to determine the effect of the Plan on carriers and consumers. NASUCA asserts that the "problems with the calculations are such as to make them worthless as a means to evaluate either the Missoula Plan itself or the Plan amended by the FBM."³³ The Commission should consider the following flaws outlined by commenters:

- The impact calculation does not include the Missoula Plan's SLC increases for consumers whose rates do not exceed the High Benchmark Target, which eliminates the net benefit for most states, according to NASUCA;³⁴
- The FBM does not appear to reflect portability. NASUCA calculates that adding CETCs would add \$230 million to the estimate of the cost of the FBM;³⁵

³⁰ / See, Joint CLEC Commenters, at 2.

³¹ / Rate Counsel, at 10; Comments of the New Jersey Division of Rate Counsel, CC Docket No. 01-92, October 24, 2006, at 5; Reply Comments of the New Jersey Division of Rate Counsel, CC Docket No. 01-92, February 1, 2007, at 2.

³² / Sprint Nextel, at 1.

³³ / NASUCA, at 12; See, also, New York DPS, at 4.

³⁴ / NASUCA, at 11.

- Calculation of benefits based on numbers-based and connections-based USF assessment mechanism is “misleading”;³⁶
- The FBM benefits analysis assumes that all benefits flow to residential consumers and ignores “the cost imposed on non-residential customers of the USF assessments required by the FBM”;³⁷
- The analysis and data accompanying the FBM amendment are incomplete;³⁸
- The FBM amendment also lacks such basic details as the methodology used in the state-by-state analysis attached to the Amendment;³⁹
- The mechanism fails to include business rates;⁴⁰
- Details regarding the funding and administration of the mechanism “remain shrouded in darkness”;⁴¹
- The state data may be incomplete, suggesting that the anticipated impacts of the FBM may be incorrect;⁴² and
- As discussed above, the selection of high and low rate benchmarks are unsupported and appear to be random.⁴³

³⁵ / *Id.*, at 12.

³⁶ / *Id.*

³⁷ / *Id.*; *See, also*, Five MACRUC States, at 4 stating that the calculation only shows disbursements of funds.

³⁸ / Sprint Nextel, at 3-4, stating that the results illustrated in the January 30th ex parte are based on data from 31 states and it is unclear “how much the FBM price tag will increase once data from the other 21 jurisdictions . . . are factored in.” *Id.*, at 4.; TSTCI states that data provided to the FBM sponsors was incomplete and thus “the data shown in the FBM filing for Texas does not accurately reflect the results of the FBM on all companies in that state, particularly the small ILECs.” TSTCI, at 2.

³⁹ / NY DPS, at 4.

⁴⁰ / Qwest, at 4.

⁴¹ / Sprint Nextel, at 5; *See, also*, Verizon, at 5 stating that the failure to detail how the FBM will be funded and administered “is not only a massive oversight, but it is inexplicable in light of identical criticisms of the Restructure Mechanism.”

⁴² / TSTCI, at 2.

⁴³ / *See, e.g.*, Qwest, at 4; Joint CLEC Commenters, at fn 7; Five MACRUC States, at 4; TSTCI, at 2.

Comments in response to the FBM amendment demonstrate that the proposal is long on promises but short on specifics about how the plan will be implemented. TSTCI, for example, seeks clarification on how residential lines would be defined, “state USF per Line”, the responsibility of state commissions and carriers in implementing the plan, and other issues.⁴⁴ Dubois Telephone Exchange, Inc., Range Telephone Cooperative, Inc. and RT Communications, Inc. (“Range Family Companies”) support the concept and principles of the FBM, yet also suggest that the details have “not been worked out.”⁴⁵

Rate Counsel respectfully disagrees with the Minnesota Independent Coalition’s suggestion that despite the fact that it has not had sufficient time nor sufficient details to evaluate the specific benchmarks, the Commission can further evaluate the amendment “as part of the process of refinement of the Missoula Plan.”⁴⁶ The Commission should refrain from adopting a plan based on the expectation that it can work out the details and determine the actual consequences at some later date. Despite supporting the “principle of access charge equity across states and companies” TSTCI raises concerns about the impact of the FBM on ratepayers and about the specifics of the proposals stating that “a more in depth examination of the FBM plan is needed before TSTCI can fully lend its support to the FBM proposal.”⁴⁷

⁴⁴ / TSTCI, at 2.

⁴⁵ / Range Family Companies, at 3.

⁴⁶ / Minnesota Independent Coalition, at 3.

⁴⁷ / TSTCI, at 1.

The Federal Benchmark Mechanism and the Missoula Plan fail any test of competitive neutrality and seek to guarantee a level of revenues for the ILECs at the expense of competitors and consumers.

Rate Counsel concurs with NASUCA that the FBM “further enhances the revenue position of the ILECs, and dampens competitive pressures”⁴⁸ by preventing SLC increases when rates are too high and instead using monies from the federal USF. Comments demonstrate that the FBM simply continues the Missoula Plan’s objective of protecting the ILECs’ stream of revenues and market dominance. Regarding the assumption that states would increase end user rates if the FBM required intrastate access charges to be reduced, Broadview Networks, NuVox Communications, One Communications Corp., and XO Communications (“Joint CLEC Commenters”) state: “Inherent in this judgment is a punishment for any State that lowered access charges but that did not assure ILECs access charge revenue neutrality, a driving objective behind the Missoula Plan.”⁴⁹

The Florida PSC agrees that the Missoula Plan would insulate ILECS from competition by shifting revenues from intercarrier compensation to fixed charges on consumers’ phone bills.⁵⁰ NASUCA observes, in discussing Category A funding: “The telephone company is guaranteed the same level of revenues; the source of those revenues has simply changed.”⁵¹ Furthermore, while all consumers pay in to the plan, only ILECs can draw on the mechanism. As suggested by the Public Service Commission of Wisconsin this “may create a barrier to effective competition.”⁵²

⁴⁸ / NASUCA, at 8.

⁴⁹ / Joint CLEC Commenters, at 2.

⁵⁰ / Florida PSC, at 3.

⁵¹ / NASUCA, at 5.

⁵² / Public Service Commission of Wisconsin, at 4.

The Commission should ensure that any plan it adopts does not violate Section 254 of the 1996 Act with respect to competitive neutrality principles. The Joint CLEC Commenters submit that the FBM amendment may “exacerbate some of the prevailing discriminatory and anti-competitive consequences of the Plan.”⁵³ According to Joint CLEC Commenters, while competitors will not be able to draw on the FBM or restructure mechanism, it will be financed by all end users, thus the “FBM would discriminate against non-incumbent carriers and further skew competition unfairly in the favor of ILECs.”⁵⁴ The National Cable & Telecommunications Association (“NCTA”) describes the Plan as adding to the burden that customers of competitive carriers face and observes that the Plan “essentially requires those companies to subsidize the incumbent LECs against whom they compete.”⁵⁵ The Commission should heed the warnings of CTIA – The Wireless Association that “additional subsidies reserved exclusively for ILECs also are the least effective means of spurring broadband deployment, particularly in rural areas.”⁵⁶

The burden of reform continues to be borne by consumers.

In discussing the apparent monthly “impact” on New Jersey’s consumers, the Rate Counsel stated that “the merits of the proposal depend critically upon carriers flowing through their reduced access charges to end users.”⁵⁷ NASUCA similarly raises this concern and observes that the calculation of the estimates of the net benefits to

⁵³ / Joint CLEC Commenters, at 2.

⁵⁴ / *Id.*, at 8.

⁵⁵ / NCTA, at 2.

⁵⁶ / CTIA – The Wireless Association, at 3.

⁵⁷ / Rate Counsel, at 8.

residential consumers presented in the January 30 *Ex Parte* “directly equates the impact on (*i.e.*, dollars flowing to) telephone companies from the RM, the FBM and the HCLF with the purported impact on residential customers . . . This makes the assertion of a ‘total impact on residential customers’ as a per-line benefit from these dollars a substantial exaggeration.”⁵⁸

The Florida PSC estimates that the Missoula Plan shifts the burden of nearly two-thirds of the revenues currently collected from carriers to consumers.⁵⁹ “[W]e believe that the plan is still contrary to the best interests of consumers because it shifts cost recovery to consumers through increases in Subscriber Line Charge (SLC) and the Universal Service Fund (USF) without assurances of offsetting benefits.”⁶⁰ The Florida PSC continues:

Under the Missoula Plan, ICC rates are reduced by \$6 billion over four years. While these reductions will help reduce the costs carriers pay for ICC, there is no guarantee that these reductions will find their way to customers.... [T]he FPSC is concerned that the plan does not appear to require any pass through of reductions in ICC rates to end-users, and residential wireline customers may end up paying more.⁶¹

SDTA supports the plan, asserting that it “will prevent effective end-user rates from exceeding the High Benchmark Target.”⁶² Contrary to the SDTA’s assertion, SLCs will skyrocket for many consumers. A proper analysis of the Plan’s effect on consumers must consider not only the rate for service, but also the SLC added at the bottom of the bill. USTelecom asserts that the FBM solves the early adopter problem “without

⁵⁸ / NASUCA, at 12.

⁵⁹ / Florida PSC, at 3.

⁶⁰ / *Id.*, at 1.

⁶¹ / *Id.*, at 3.

⁶² / SDTA, at 3.

exorbitant costs” and though larger than the original estimates, the FBM “creates reasonable limits to prevent the cost from escalating.”⁶³ To the contrary, as the Rate Counsel explained in initial comments, the Federal Benchmark Mechanism would increase the Missoula Plan by over \$800 million. The Commission should consider the concerns raised by Rate Counsel and others that absent regulatory intervention these monies would flow to carriers rather than to consumers.⁶⁴ As noted by CTIA – The Wireless Association, “The FBM would further increase support for ILECs, but no other carriers, by over \$500 million annually *without any obligation to expand or improve services for consumers.*”⁶⁵ Commenters calculate that the Missoula Plan as amended by the FBM will increase the USF by 40%.⁶⁶ The total impact on the USF of the Missoula Plan and the FBM amendment as calculated by NASUCA is \$3.25 billion.⁶⁷ The Five MACRUC States observe that the FBM would “dramatically increase the already unsustainable Federal Universal Service Fund (USF) and exacerbate the net contributor status of ratepayers from the majority of MACRUC states.”⁶⁸ Joint CLEC Commenters echo concerns regarding the increase in USF obligations suggesting that “coupled with the fact that the Missoula Plan supporters continue to evade explaining exactly how the

⁶³ / USTelecom, at 8.

⁶⁴ / Rate Counsel, at 10; NASUCA, at 12; Florida PSC, at 3.

⁶⁵ / CTIA – The Wireless Association, at 5 (emphasis added).

⁶⁶ / NASUCA, at 14. The estimate is conservative, because, as NASUCA notes, this calculation ignores additional payments of FBM support to CETCs; CTIA – The Wireless Association, at iii, 6.

⁶⁷ / NASUCA, at 14.

⁶⁸ / Five MACRUC States, at 4.

reductions in rates the Plan propounds will be recovered from users, the impact on consumers is overwhelmingly detrimental.”⁶⁹

The addition of the Federal Benchmark Mechanism fails to repair the fatally flawed Missoula Plan.

Joint CLEC Commenters, among others, submit that the FBM amendment “cures none of the fundamental flaws of the Missoula Plan.”⁷⁰ Rate Counsel concurs. While Rate Counsel commends the efforts of Missoula Plan Supporters to amend the plan and to continue to engage in discussions with stakeholders, the efforts have not addressed the concerns of consumers but, rather, in USTelecom’s words, addressed “criticisms of the Plan to ensure that it fully meets the industry’s needs.”⁷¹ USTelecom would have the Commission believe that the limitations of the Early Adopter Fund presented the sole “polarizing issue”⁷² and thus the FBM amendment purportedly solves all contention regarding the Missoula Plan. Contrary to USTelecom’s assertion that the FBM creates “more end-user parity across states”⁷³ the Missoula Plan seeks to shift the burden of reform from carriers to consumers. The FBM simply shifts the burden among different groups of consumers.

The Five MACRUC States conclude: “The proposed amendment does nothing to make the Missoula Plan more palatable, in fact it makes the Plan worse. This proposed amendment is an attempt to increase the current subsidy flow from the end-users in net

⁶⁹ / Joint CLEC Commenters, at 6.

⁷⁰ / *Id.*, at 1; *See, also*, Verizon, stating: “it does nothing to address the numerous flaws in the Plan that multitude of commenters have identified.” Verizon, at 1.

⁷¹ / USTelecom, at 2.

⁷² / *See, e.g., Id.*, at 6.

⁷³ / *Id.*, at 7.

contributor states to carriers in more rural states with incidental benefits for consumers in those states.”⁷⁴ As noted by NASUCA, the FBM seeks to solve one of the major imbalances of the Missoula Plan, but in doing so increases the burden on all other consumers: “The FBM ‘solves’ this problem by adding an additional \$800 million to the federal USF!”⁷⁵ In the end, the FBM cannot solve the flaw of the original Missoula Plan: seeking to replace all of the revenue reductions faced by carriers with subscriber line charges and federal universal service fund dollars (*i.e.*, making the ILECs whole).⁷⁶ As noted by NASUCA, the “Missoula Plan plus the FBM represents even more of a lock-in of local telephone companies’ revenues than did the Missoula Plan standing alone.”⁷⁷

The Five MACRUC States note the continued lack of consensus regarding the Plan: “Twenty-Five states filed initial comments, either individually or jointly, expressing concerns or opposing the Plan. The January 30th proposed amendment was filed by only five states and therefore, not representative of the views of the majority of states.”⁷⁸ Rate Counsel concurs with NASUCA that:

The FBM would be worth more consideration if it were presented independently in the Commission’s universal service dockets. Unfortunately, the FBM is not presented independently: It is inextricably entwined with the fundamentally misguided and flawed Missoula Plan, and therefore should not be adopted, for the many reasons set forth in the initial and reply comments filed by NASUCA and by many other commenters.⁷⁹

⁷⁴ / Five MACRUC States, at 3.

⁷⁵ / NASUCA, at 3.

⁷⁶ / Rate Counsel, at 9; Comments of the New Jersey Division of the Rate Counsel, CC Docket No. 01-92, October 24, 2006, at 14-15; NASUCA, at 2-3.

⁷⁷ / NASUCA, at 3.

⁷⁸ / Five MACRUC States, at 3.

⁷⁹ / NASUCA, at 2, note omitted.

Qwest Communications International, Inc. (“Qwest”) also contends that while the FBM may address one flaw in the Missoula Plan, the Plan “itself still continues to carry so many of its original flaws” that the Commission should continue to reject the Missoula Plan.⁸⁰

Initial comments demonstrate that the proposed amendment would exacerbate the Missoula Plan’s effect of increasing subsidies to ILECs. Verizon states: “In other words, the Amendment does not target any new reforms; instead, it provides an after-the-fact reward to states for doing what they found sensible – and affordable – to do entirely outside the framework of the Missoula Plan.”⁸¹ CTIA – The Wireless Association states “the FBM would partly reintroduce the anticompetitive, distorted rate structures, with subsidized end user rates, that the early adopter states have rebalanced and rationalized over the last 25 years.”⁸² The Commission should consider the observations of CTIA – The Wireless Association:

[R]ecognizing that the Missoula Plan lavishes too much support on states that have done little or nothing to reduce intrastate access charges, the Plan’s supporters now also want to overcompensate early adopter states to make the Plan “more fair and balanced.” It would be far more efficient, however to reduce the Missoula Plan’s subsidies to carriers in the non-early adopter states. Two countervailing anticonsumer burdens cannot serve the public interest.⁸³

⁸⁰ / Qwest, at 1.

⁸¹ / Verizon, at 1.

⁸² / CTIA – The Wireless Association, at 9.

⁸³ / *Id.*, at ii.

III. CONCLUSION

Initial comments demonstrate that the proposed Federal Benchmark Mechanism fails to remedy the fundamental flaws of the Missoula Plan. Rate Counsel continues to recommend that the Commission reject the Missoula Plan for the numerous reasons outlined in its previously filed comments:

- ILECs do not require dollar for dollar revenue recovery: The plan should not protect ILECs from emerging competition and evolving technology.
- The Plan would harm consumers as evident by lack of support from consumer groups.
- Low-income, low-volume customers are particularly vulnerable to the rate increases that the Plan entails.
- The Plan unnecessarily increases the high cost fund.
- The Plan improperly preempts state authority.
- The Plan does not merit any consideration and is distracting the Commission, state regulators, the industry, and consumer advocates from designing sensible, competitively neutral intercarrier compensation reform.
- The Commission should consider a more gradual plan that does not penalize consumers or insulate ILECs from competition.

The proposed Federal Benchmark Mechanism does not address many of the flaws of the original Missoula Plan and simply shifts an ever increasing burden among groups of consumers.

Respectfully submitted,

RONALD K. CHEN
PUBLIC ADVOCATE

By: Christopher J. White
Christopher J. White, Esq.
Deputy Ratepayer Advocate
Division of Rate Counsel